

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

99-E-0410

**IN THE MATTER OF THE LIQUIDATION OF
TUFTS HEALTH PLAN OF NEW ENGLAND, INC.**

PLAN OF LIQUIDATION

Paula T. Rogers, Commissioner of Insurance of the State of New Hampshire, in her capacity as the duly appointed Liquidator (the "Liquidator") of Tufts Health Plan of New England, Inc. ("TNE"), submits her Plan of Liquidation (the "Plan of Liquidation").

Section 1 – Definitions

1.1. "Administration Costs" means the costs and expenses incurred as a result of the Rehabilitation and Liquidation of TNE and allowable under New Hampshire R.S.A. 402-C:44 (I).

1.2. "Administrative Services Agreement" or "ASA" mean that certain agreement entered into by and between the Liquidator and TAHMO dated as of December 20, 1999, providing for the rendering of administrative services by TAHMO on behalf of the estate of TNE in Liquidation.

1.3. "Allowed Claim" shall mean a Claim against TNE (a) which is recommended for payment by the Liquidator, and as to which no further approval in the Liquidation Proceeding is required prior to payment of the Claim, or (b) the nature, amount, enforceability and validity of which is determined or resolved pursuant to either (i) an agreement in accordance with applicable law between the Liquidator and the holder of such Claim and as to which no party in interest has interposed a timely objection, or (ii) the entry of a judgment, order or decree of the Liquidation Court which has become a Final Order. "Allowed Special Deposit Claim" shall mean an Allowed Claim that is benefited by the Rhode Island Special Deposits.

1.4. "Amended Claim" shall have the meaning set forth in Section 3.3(A) of the Funding and Settlement Agreement.

1.5. "Ancillary Receiver" means Marilyn Shannon McConaghy, Director of the Department of Business Regulation of the State of Rhode Island, as Successor Ancillary Receiver in the Ancillary Liquidation Proceeding against TNE pending in the Superior Court of Providence County, Rhode Island (M.P. No. 99-6627) (the "Ancillary Liquidation Proceeding"), and her successors, if any.

1.6. “Approval Order” means the order entered by the Liquidation Court approving the Plan of Liquidation and the Funding and Settlement Agreement.

1.7. “Claim” means any assertion of a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; and any right to an equitable remedy for breach of performance, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.8. “Classes One through Five” means all Allowed Claims against TNE having the priority of distribution of the assets of the TNE’s estate, as set forth in New Hampshire R.S.A. 402-C:44-I-V, as amended. A Class Five Claim shall therefore mean a claim entitled to the priority set forth in R.S.A. 402-C:44, V.

1.9. “Conclusion of Services” means a date to be mutually agreed upon by the Liquidator and THP as the date on which substantially all Claims against TNE or its estate have been allowed or disallowed, and on which payment of all Allowed Claims has either been made or adequately reserved for, and the Proof of Claim process shall have been materially resolved and completed, and on which it is reasonable to conclude THP’s rendering of administrative services.

1.10. “Deposit” means the amount of \$3,500,000 to be deposited with a financial institution domiciled and located in the State of New Hampshire, as provided for in Section 2.1 of the Funding and Settlement Agreement.

1.11. “Effective Date” means the date on which the Approval Order becomes a Final Order.

1.12. “Final Order” means an order, judgment or decree of the Liquidation Court (or such other court of competent jurisdiction as to which the Liquidation Court has specifically permitted to proceed to enter such order) as to which any appeal that has been or may be taken has been finally resolved and as to which the time for further appeal has expired.

1.13 “Funding and Settlement Agreement” shall mean that certain Funding and Settlement Agreement dated as of November 14, 2000, by and between the Liquidator and THP attached hereto as Exhibit 1.

1.14 “Liquidation Court” shall mean the Superior Court for Merrimack County, New Hampshire.

1.15. “Liquidation Order” means the Order issued by the Liquidation Court dated January 3, 2000 in the matter entitled In the Matter of Tufts Health Plan of New

England, Inc., Docket No. 99-E-410, directing that TNE be placed in Liquidation pursuant to the provisions of New Hampshire R.S.A. 402-C.

1.16. “Marshaled Assets” includes all cash, securities, real property, personal property (whether tangible or intangible), claims, choses in action, and any other asset of TNE, now existing or hereafter arising.

1.17. “Proof of Claim” and “Proof of Claim Process” mean, respectively, the form of Claim or Claims filed by members, creditors and others purporting to have Claims against and from the estate of TNE pursuant to New Hampshire R.S.A. 402-C:37-38, and the process and procedure by which such Proofs of Claim are received, reviewed, considered, adjudicated, disputed, resolved and approved, consistent with this Plan and the Funding and Settlement Agreement.

1.18. “Rehabilitation Order” means the Order issued by the Merrimack County Superior Court dated November 22, 1999 in the matter entitled In the Matter of Tufts Health Plan of New England, Inc., Docket No. 99-E-410, directing that TNE be placed in Rehabilitation pursuant to the provisions of New Hampshire R.S.A. 402-C.

1.19. “Rhode Island Special Deposits” means certain cash deposits made by TNE or THP, as the case may be, in connection with TNE’s operations in the State of Rhode Island, in the original amounts of \$1,280,000, \$150,000 and \$100,000, held in a special, restricted account in the State of Rhode Island by the Ancillary Receiver.

1.20 “TAHMO” shall mean Tufts Associated Health Maintenance Organization, Inc. “THP” shall mean Tufts Associated Health Plan, Inc., TAHMO, TAHMO Holdings, Inc., Tufts Benefit Administrators, Inc. and Total Health Plan, Inc., jointly and severally.

1.21 “THP Allowed Claims” means the Class One Claim of THP allowed in the amount of \$4,138,358 (as incurred from the date of the Rehabilitation Order, plus the amount to be accrued from June 30, 2000 through the Conclusion of Services under the Administrative Services Agreement, including the amount accrued for services rendered in the Proof of Claim Process), and the Class Five Claims of the THP affiliates allowed in the amount of \$6,440,972, each as administered under the Funding and Settlement Agreement.

1.22 “THP Guaranty” shall mean the guaranty by THP of payment in full of all Allowed Claims in Classes One through Five, pursuant to the terms of the Funding and Settlement Agreement.

Section 2 – Classification of and Priority of Distribution on Claims

2.1. **Classification of Claims.** All Claims against TNE shall be classified in accordance with the categories set forth in RSA 402-C, including but not limited to RSA 402-C:44.

2.2. **Distributions on Claims.** Distributions on Allowed Claims shall have the priority to which such distributions are entitled under RSA 402-C:44. The Liquidator shall continue to pay Administration Costs in the ordinary course of her administration of this estate. Upon the Effective Date, the Liquidator shall have the authority to pay distributions on all Allowed Claims in Classes One through Five, in the order and priority set forth in RSA 402-C:44 (and, with respect to Allowed Special Deposit Claims, subject to Section 2.3 of the Plan), as adjudicated consistently with the Funding and Settlement Agreement and the Plan. Interest shall not accrue on any Allowed Claim.

2.3. **Rhode Island Special Deposits.**

(A) As soon as practicable and upon such terms as the Ancillary Receiver and the Liquidator shall agree, and subject to such court approval as the Ancillary Receiver must obtain, the Liquidator shall commence payment of all Allowed Special Deposit Claims held by the beneficiaries of the Rhode Island Special Deposits. Payments on such Allowed Claims may be made either from the proceeds of the Rhode Island Special Deposits or, at the Liquidator's option and as a matter of administrative convenience, from general funds of TNE's estate. In addition, as a matter of administrative convenience and in respect of comity between the applicable laws of the States of New Hampshire and Rhode Island, the Liquidator shall be authorized to pay each Allowed Special Deposit Claim in full, including that portion that would otherwise be deductible under RSA 402-C:44 (the "\$50 Deductible"), in order to avoid incurring the additional Administration Costs that would otherwise arise if the holders of Allowed Special Deposit Claim were required to assert their claims for the \$50 Deductible separately against the Ancillary Receiver. Nothing in this Section 2.3 shall be deemed to waive the \$50 Deductible with respect to any Claim other than an Allowed Special Deposit Claim.

(B) If and to the extent that the Liquidator elects to pay any such Allowed Special Deposit Claims from general funds of the estate, the Ancillary Receiver shall reimburse the Liquidator from the proceeds of the Rhode Island Special Deposits, by wire transfer, within three business days from the date that the Liquidator provides written notice to the Ancillary Receiver or her agents that such Allowed Special Deposit Claims have been paid from general estate funds. The amount of each such reimbursement shall be equal to the amount of the Allowed Special Deposit Claims so paid, plus the amount designated by the Liquidator and acceptable to the Ancillary Receiver as representing the reasonable Administration Costs allocable to the Allowed Special Deposit Claims so paid. If and to the extent that the Liquidator elects to pay any Allowed Special Deposit Claims directly from the proceeds of the Rhode Island Special Deposits, the Liquidator shall submit a schedule or schedules of Allowed Special Deposit Claims to the Ancillary Receiver, who shall wire transfer to the Liquidator an amount of Rhode Island Special Deposit proceeds sufficient to pay (i) all Allowed Special Deposit Claims in the amount indicated on the respective schedule or schedules, plus (ii) an amount designated by the Liquidator and acceptable to the Ancillary Receiver as representing the reasonable Administration Costs allocable to the Allowed Special Deposit Claims so scheduled.

Upon receipt of such transfers, the Liquidator shall cause the payment of the Allowed Special Deposit Claims from the Rhode Island Special Deposit proceeds so received.

(C) Upon the payment of all Allowed Special Deposit Claims and all associated Administration Costs (including Administration Costs incurred in the Ancillary Liquidation Proceeding) and upon authorization by the Rhode Island court in the Ancillary Proceeding, the Ancillary Receiver shall wire transfer to the Liquidator any and all remaining proceeds of the Rhode Island Special Deposits (including interest accrued thereon) for the benefit of TNE's estate, to be distributed in accordance with the terms of the Plan of Liquidation.

Section 3 – Funding and Settlement Agreement

3.1. The Liquidator and THP have entered into the Funding and Settlement Agreement, which provides, among other things, for the administration and adjudication of Claims against TNE; the contribution by THP of certain funds to TNE's estate to pay Allowed Claims; THP's guaranty of payment of all Allowed Claims in Classes One through Five; and the compromise of claims by and between THP, the Liquidator and Bath Iron Works Corporation ("BIW"). The Funding and Settlement Agreement is an integral component of the Plan of Liquidation, and is incorporated into the Plan of Liquidation by reference.

Section 4 – General Provisions

4.1 **Standing to Object to Allowance of Claims.** All holders of Claims shall have standing to object to the Liquidator's allowance or disallowance of their respective Claims, in accordance with RSA 402-C. In accordance with the terms and conditions of the Funding and Settlement Agreement, and in respect of the THP Guaranty, THP shall have standing to contest the allowance by the Liquidator of Claims allowed by the Liquidator and not agreed to by THP in the course of the Proof of Claim Process, as set forth in Section 3.3 of the Funding and Settlement Agreement.

4.2. **Review of Administration Costs.** In respect of its guaranty of payment of all Allowed Claims in Classes One through Five, the Liquidator has submitted to THP a budget of projected future administration costs to THP, in accordance with Section 3.3(G) of the Funding and Settlement Agreement which provides for a means by which the Liquidator and THP shall attempt to resolve any disputes which may arise in respect to the budget. Nothing in this Section 4.2 shall abrogate the rights of other holders of Claims from asserting any objections they may have to the allowance or payment of Administration Costs by the Liquidator in accordance with the provisions of RSA 402-C.

4.3. **Payment of THP Allowed Claim.** Upon the Conclusion of Services (as defined in the Funding and Settlement Agreement) and the payment of all Allowed Claims in Classes One through Five (other than any of the THP Allowed Claim), the Liquidator shall transfer any residual funds of TNE's estate (less any reserves that the Liquidator shall request for payment of Administration Costs to be incurred in winding

up and closing this estate) to THP in respect of the THP Allowed Claim. Such transfer shall occur by wire transfer. Any reserves established hereunder that are not used to pay Allowed Claims or Administration Costs will be distributed to THP in respect to the THP Allowed Claims upon the closing of TNE's estate.

4.4. **Further Reporting.** The Liquidator shall report to the Liquidation Court at such time as the Conclusion of Services (as defined in the Settlement Agreement) shall occur. Such report shall be in the form of, or shall be annexed to, a pleading to be submitted to the Court, and as otherwise required by RSA 402-C. The Liquidator shall also provide to THP, in respect of the THP Guaranty, reports concerning the allowance and payment of Allowed Claims, in such form as required under Section 4.1 of the Funding and Settlement Agreement.

4.5 **Injunctive Provisions.**

(A) All persons and entities holding Claims against TNE shall be permanently enjoined and prohibited from recovering or attempting to recover any money or property in which TNE or its estate has an interest, other than under the terms of the Plan, or without first obtaining a Final Order from the Liquidation Court with respect to the assertion of such Claim.

(B) Other than with respect to any Claim based upon an express guaranty by THP in an agreement made with any other person, all persons holding Claims against TNE shall be permanently enjoined and prohibited from asserting any such Claims against THP or any defendants in the Liquidator's Action, and from attempting to recover any money or property from THP or any defendants in the Liquidator's Action in respect of such Claims.

4.6 **Retention and Disposal of TNE Records.** The records of and relating to TNE shall be retained and disposed of in accordance with Section 2.6 of the Funding and Settlement Agreement.

4.7 **Retention of Powers of Liquidator.** The Liquidator reserves and retains all of her rights and powers under RSA 402-C and other applicable law in connection with her administration of the Liquidation Proceeding.

4.8. **Retention of Jurisdiction.** The Court shall retain exclusive jurisdiction to enforce the provisions of this Order, the Plan of Liquidation, the Deposit, and all of the agreements attendant thereto or incorporated therein by reference (including without limitation the THP Guaranty), and to insure that the intent and purposes of the Plan of Liquidation are carried out and given effect. Without limiting the generality of the foregoing, the Court shall retain exclusive jurisdiction for the following purposes:

(A) To consider any modification or amendment to the Plan of Liquidation (including any of the agreements contemplated by, incorporated into, or attendant to this Plan of Liquidation); and

(B) To hear and determine:

- i. All controversies, suits and disputes, if any, as may arise in connection with the Proof of Claim Process or under any of the agreements contemplated by, incorporated into, or attendant to the Plan of Liquidation, until entry of an Order terminating this Liquidation Proceeding;
- ii. All controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan of Liquidation, the Funding and Settlement Agreement (including without limitation the THP Guaranty and the Deposit), the Settlement Agreement and Release between the Liquidator and Bath Iron Works Corporation, or this Order; and,
- iii. All proceedings to enforce performance of the Plan of Liquidation and this Order against any person, including without limitation, proceedings seeking injunctive relief in aid of compliance with this Order, the Plan of Liquidation and any of the agreements contemplated by, incorporated into, or attendant to the Plan of Liquidation.

Dated: November ___, 2000

Respectfully submitted,

PAULA T. ROGERS,
COMMISSIONER OF INSURANCE OF
THE STATE OF NEW HAMPSHIRE,
AS LIQUIDATOR OF TUFTS HEALTH
PLAN OF NEW ENGLAND, INC.

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